

By Senator Stewart

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1                                   A bill to be entitled  
2       An act relating to an excise tax on water extracted  
3       for commercial or industrial use; revising the title  
4       of ch. 211, F.S.; creating part III of ch. 211, F.S.,  
5       entitled "Tax on Water Extracted for Commercial or  
6       Industrial Use"; creating s. 211.40, F.S.; defining  
7       terms; creating s. 211.41, F.S.; imposing an excise  
8       tax upon persons extracting water from waters of the  
9       state for commercial or industrial use; specifying the  
10      rate of the tax; requiring tax proceeds to be  
11      deposited in a specified trust fund; requiring that  
12      tax proceeds be separately accounted for and used for  
13      specified purposes by the Department of Environmental  
14      Protection; creating s. 211.42, F.S.; specifying  
15      requirements for extractors in filing monthly returns  
16      with the Department of Revenue; requiring the  
17      department to prescribe by rule the form of such  
18      returns; providing requirements for the returns;  
19      authorizing the department to grant extensions for  
20      filing and payment under certain circumstances;  
21      creating s. 211.43, F.S.; specifying interest payable  
22      on unpaid taxes; specifying the delinquency penalties  
23      for failure to timely file a return; specifying the  
24      penalty for the substantial underpayment of taxes;  
25      providing construction; authorizing the department to  
26      settle or compromise taxes or interest in accordance  
27      with certain provisions; creating s. 211.44, F.S.;  
28      authorizing the department to adopt rules; requiring  
29      governmental entities to cooperate with the department

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30 and furnish information without cost to the department  
31 for certain purposes; specifying recordkeeping  
32 requirements for extractors; authorizing the  
33 department to inspect or examine an extractor's books  
34 and records and to require testimony under oath or  
35 affirmation of certain persons; authorizing the  
36 department to issue certain subpoenas; authorizing  
37 certain representatives of the department to  
38 administer an oath or affirmation; authorizing a  
39 circuit court to issue orders of compliance under  
40 certain circumstances; requiring books and records to  
41 be available for inspection by the department;  
42 authorizing the department to inspect or examine an  
43 extractor's books and records, issue subpoenas,  
44 require testimony under oath or affirmation of certain  
45 persons, and apply for certain judicial orders;  
46 specifying requirements and procedures for the  
47 department in conducting audits, assessing  
48 deficiencies, and crediting or refunding overpayments;  
49 specifying procedures and requirements for claiming  
50 refunds; providing that amounts due remain a lien on  
51 certain property and assets; specifying requirements  
52 and procedures for warrants and alias tax executions  
53 issued by the department; requiring that suits brought  
54 by the department for violations be brought in circuit  
55 court; creating s. 211.45, F.S.; providing criminal  
56 penalties for certain violations; amending ss. 213.05,  
57 213.053, and 403.890, F.S.; conforming provisions to  
58 changes made by the act; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 211, Florida Statutes, entitled "Tax on Production of Oil and Gas and Severance of Solid Minerals," is retitled "Tax on Production of Oil and Gas, Severance of Solid Minerals, and Water Extracted for Commercial or Industrial Use."

Section 2. The Division of Law Revision is directed to create part III of chapter 211, Florida Statutes, consisting of ss. 211.40-211.45, Florida Statutes, to be entitled "Tax on Water Extracted for Commercial or Industrial Use."

Section 3. Section 211.40, Florida Statutes, is created to read:

211.40 Definitions.—As used in this part, the term:

(1) "Department" means the Department of Revenue.

(2) "Extractor" means a person engaged in the business of extracting water from waters of the state for commercial or industrial use. For purposes of this part, commercial or industrial use does not include water extracted in connection with any of the following:

(a) Public water supply utilities.

(b) Maintenance of land, crops, or livestock, when extracted by an agricultural producer.

(c) Use within any structure for restroom, sanitation, or kitchen facilities.

(3) "Waters of the state" has the same meaning as the term "waters" as defined in s. 403.031.

Section 4. Section 211.41, Florida Statutes, is created to read:

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88       211.41 Excise tax; distribution and use of tax proceeds.-

89       (1) An excise tax is levied upon every person who acts as  
90 an extractor at a rate of one one-thousandth of a dollar per  
91 gallon of water extracted from waters of the state.

92       (2) The proceeds of the tax imposed by this section must be  
93 deposited in the Water Protection and Sustainability Program  
94 Trust Fund established under s. 403.891, subject to the  
95 requirements of s. 403.890, and must be accounted for separately  
96 within the trust fund. In addition to the purposes specified in  
97 s. 403.890(1)(a), (b), and (c), such tax proceeds must be used  
98 by the Department of Environmental Protection for geological  
99 surveys to monitor the health of waters of the state and for  
100 saltwater intrusion prevention and management.

101       Section 5. Section 211.42, Florida Statutes, is created to  
102 read:

103       211.42 Returns; filing requirements.-

104       (1) Each extractor shall remit tax due and submit to the  
105 department a return on or before the 25th day of each month  
106 which shows the total amount of water extracted from waters of  
107 the state during the previous month, the source and county of  
108 extraction, the location of all facilities used in the  
109 extraction of taxable water, and other information required by  
110 department rule. The department shall prescribe by rule the form  
111 of the return. The return must be filed on or before the last  
112 day prescribed for payment of the tax and must be signed and  
113 verified under oath by the extractor or the extractor's  
114 authorized representative.

115       (a) The return must include a statement of the tax due  
116 under this part and such other information as the department may

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117 reasonably require.

118 (b) A return must be filed even though no tax is due. Any  
119 tax, penalty, or interest due must be remitted with the return.

120 (2) If any due date prescribed by this section falls on a  
121 Saturday, Sunday, or state or federal holiday, the last date  
122 prescribed for filing or payment is the next day that is not a  
123 Saturday, Sunday, or state or federal holiday. The date of  
124 receipt by the department, or the postmark date if mailed,  
125 determines the timeliness of payment or filing.

126 (3) The department may grant an extension of time for  
127 payment or filing of a return upon written request submitted on  
128 or before the due date.

129 Section 6. Section 211.43, Florida Statutes, is created to  
130 read:

131 211.43 Interest and penalties; failure to pay tax or file  
132 return.—

133 (1) If any part of the tax imposed by this part is not paid  
134 on or before the due date, interest must be added to the amount  
135 due at the rate of 12 percent per year from the due date until  
136 the date of payment.

137 (2) An extractor who fails to file the return required  
138 under s. 211.42 by the due date must pay a delinquency penalty.  
139 If tax is due with the return, the delinquency penalty is 10  
140 percent for each month, or portion thereof, of the amount of tax  
141 due with the return, not to exceed 50 percent of the tax due. If  
142 no tax is due with the return, the delinquency penalty is \$50  
143 for each month, or portion thereof, during which the return was  
144 not filed, not to exceed \$300 in aggregate. The amount of tax  
145 due with a return must be reduced by amounts properly creditable

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146 against the tax liability shown on the return on the date the  
147 return was due.

148 (3) An extractor who makes a substantial underpayment of  
149 the tax due under this part must pay a penalty of 10 cents per  
150 gallon of water extracted for which tax was not paid. For  
151 purposes of this subsection, a substantial underpayment of tax  
152 is a deficiency of tax in an amount exceeding 35 percent of the  
153 total tax due for a month.

154 (4) Any penalty or interest imposed under this section is  
155 deemed assessed upon the assessment of the tax and must be  
156 collected and paid in the same manner as the tax.

157 (5) The department may settle or compromise any penalty  
158 imposed by this section for reasonable cause in accordance with  
159 s. 213.21. The department may settle or compromise interest  
160 imposed by this section only as authorized by s. 213.21.

161 Section 7. Section 211.44, Florida Statutes, is created to  
162 read:

163 211.44 Administration and enforcement; books and records;  
164 refunds.—

165 (1) The department may adopt rules to administer this part,  
166 including rules necessary to prescribe the form and content of  
167 returns and reports.

168 (2) All state, county, and municipal agencies, boards,  
169 bureaus, departments, and districts shall cooperate with the  
170 department and furnish any information the department deems  
171 necessary, without cost to the department, for the purposes of  
172 administering, collecting, and enforcing the tax imposed under  
173 this part.

174 (3) (a) Each extractor shall maintain suitable books and

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175 records relating to the extraction of waters of the state to  
176 enable the department to determine the amount of tax due under  
177 this part. Such books and records must be preserved until the  
178 time has expired during which the department may make an  
179 assessment with respect thereto, in accordance with s. 213.35.

180 (b) The department may inspect or examine the books,  
181 records, or papers of any extractor which are reasonably  
182 required for the purposes of this part and may require the  
183 extractor or the extractor's authorized representative to  
184 testify under oath or affirmation or to answer pertinent  
185 questions regarding the extractor's business or extraction of  
186 taxable waters of the state.

187 1. The department may issue subpoenas to compel third  
188 parties to testify or to produce records or other evidence in  
189 their possession.

190 2. Any duly authorized representative of the department may  
191 administer an oath or affirmation.

192 3. If any person fails to comply with a request of the  
193 department for the inspection of records or with a subpoena or  
194 fails to give testimony or respond to pertinent questions, a  
195 circuit court having jurisdiction over such person, upon  
196 application by the department, may issue orders necessary to  
197 secure compliance.

198 (c) All books and records required to be kept under this  
199 subsection must be available for inspection by the department  
200 upon written request during normal business hours.

201 (4) The department may audit or examine the books and  
202 records of an extractor to determine whether returns have been  
203 properly filed and tax has been properly paid. An audit may be

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204 commenced for any month for which the department is authorized  
205 to make an assessment of amounts due under this part. An audit  
206 must be commenced by service upon the extractor, either in  
207 person or by certified mail, of a written notice of intent to  
208 audit. The date of personal contact or the date of the notice  
209 governs the period subject to audit. If there is jeopardy to the  
210 revenue and jeopardy is asserted in or with an assessment, the  
211 department must proceed in the manner specified for jeopardy  
212 assessment in s. 213.732.

213 (5) (a) The department may assess, with or without an audit,  
214 any deficiency resulting from nonpayment or underpayment of the  
215 tax, interest, or penalties imposed by this part. The department  
216 shall inform the extractor by written notice of the amount of  
217 any deficiency or overpayment revealed by an audit, including  
218 the tax, interest, or penalties due, and shall explain the basis  
219 for the determination.

220 (b) The department may make an assessment under this part  
221 based upon the best information available to it. If an extractor  
222 fails to file a return, files a grossly incorrect or fraudulent  
223 return, or refuses to allow inspection of records, the  
224 department may make an assessment based upon an estimate of  
225 amounts due under this part. An assessment of the amounts due  
226 under this part is deemed prima facie correct, and the extractor  
227 has the burden of showing any error in calculating it.

228 (c) In the event of a deficiency, the department shall  
229 issue its written notice to an extractor for the tax, penalties,  
230 or interest due. Full payment of the total amount assessed must  
231 be made in the manner prescribed by the department in its  
232 notice.



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233       (6) (a) The department may credit or refund any overpayments  
234 of amounts due under this part which are revealed by an audit or  
235 for which a timely claim for refund has been properly filed.

236       (b) A claim for refund may be filed within the timeframe  
237 specified in s. 215.26(2).

238       (c) A claim for refund must be signed by the extractor or  
239 the extractor's duly authorized representative, successor, or  
240 assignee and must include information the department requires to  
241 determine the correctness of the claim.

242       (7) (a) Amounts due under this part remain a lien upon the  
243 property, assets, and effects of an extractor until paid or  
244 until collection thereof is barred under s. 95.091. Amounts due  
245 may be recovered by the department, on behalf of the state, by  
246 an action in any county where the property, assets, or effects  
247 of the extractor are located.

248       (b) When any tax imposed under this part becomes delinquent  
249 or is otherwise in jeopardy, the department may issue a warrant  
250 for the full amount due or estimated to be due, including the  
251 tax, penalties, interest, and costs of collection. The warrant  
252 must be directed to each sheriff and may be recorded with the  
253 clerk of the circuit court in any county where the extractor's  
254 property is located. Upon recording, the clerk of the circuit  
255 court shall execute the warrant in the same manner prescribed by  
256 law for executions upon judgments and is entitled to the same  
257 fees for this service. Upon payment of the warrant, the  
258 department shall satisfy the lien of record within 30 days.  
259 Thereafter, any interested person may compel the department to  
260 satisfy the lien of record.

261       (c) An alias tax execution may be issued whenever the

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262 department deems it necessary. Each alias tax execution must be  
263 so designated on its face and has the same force and effect as  
264 the original.

265 (d) An alias tax execution may be levied upon any third  
266 party that is in possession or control of any assets of a  
267 delinquent extractor or that is indebted to a delinquent  
268 extractor. Such tax executions have the force and effect of a  
269 writ of garnishment. The third party shall pay the debt or  
270 deliver the assets of the delinquent extractor to the  
271 department, and receipt by the department discharges the third  
272 party completely to the extent of the debt paid or assets  
273 surrendered to the department.

274 (e) When an alias tax execution becomes void, the  
275 department may cancel it of record and must do so upon the  
276 request of any interested person.

277 (8) Any employee of the department may be designated by the  
278 executive director to make and sign assessments, tax warrants,  
279 or satisfactions of tax warrants.

280 (9) Any suit brought by the department against any person  
281 for violating this part must be brought in circuit court.

282 Section 8. Section 211.45, Florida Statutes, is created to  
283 read:

284 211.45 Criminal penalties.—

285 (1) A person who willfully fails to file a return or keep  
286 books or records on the extraction of waters of the state which  
287 is taxable under this part, who files a fraudulent return, who  
288 willfully fails or refuses to produce books or records, or who  
289 willfully violates any provision of this part or any rule  
290 adopted by the department under this part commits a misdemeanor

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291 of the first degree, punishable as provided in s. 775.082 or s.  
292 775.083.

293 (2) A person who withholds tax due under this part and  
294 willfully fails to make remittance as required by this part or  
295 who purports to make payments due under this part but willfully  
296 fails to do so because the remittance fails to clear the bank or  
297 depository institution against which it is drawn commits a  
298 felony of the third degree, punishable as provided in s.  
299 775.082, s. 775.083, or s. 775.084.

300 Section 9. Section 213.05, Florida Statutes, is amended to  
301 read:

302 213.05 Department of Revenue; control and administration of  
303 revenue laws.—The Department of Revenue shall have only those  
304 responsibilities for ad valorem taxation specified to the  
305 department in chapter 192, taxation, general provisions; chapter  
306 193, assessments; chapter 194, administrative and judicial  
307 review of property taxes; chapter 195, property assessment  
308 administration and finance; chapter 196, exemption; chapter 197,  
309 tax collections, sales, and liens; chapter 199, intangible  
310 personal property taxes; and chapter 200, determination of  
311 millage. The Department of Revenue shall have the responsibility  
312 of regulating, controlling, and administering all revenue laws  
313 and performing all duties as provided in s. 125.0104, the Local  
314 Option Tourist Development Act; s. 125.0108, tourist impact tax;  
315 chapter 198, estate taxes; chapter 201, excise tax on documents;  
316 chapter 202, communications services tax; chapter 203, gross  
317 receipts taxes; chapter 206, motor and other fuel taxes; chapter  
318 211, tax on production of oil and gas, ~~and~~ and severance of solid  
319 minerals, and water extracted for commercial or industrial use;

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320 chapter 212, tax on sales, use, and other transactions; chapter  
 321 220, income tax code; ss. 336.021 and 336.025, taxes on motor  
 322 fuel and special fuel; s. 376.11, pollutant spill prevention and  
 323 control; s. 403.718, waste tire fees; s. 403.7185, lead-acid  
 324 battery fees; s. 538.09, registration of secondhand dealers; s.  
 325 538.25, registration of secondary metals recyclers; s. 624.4621,  
 326 group self-insurer's fund premium tax; s. 624.5091, retaliatory  
 327 tax; s. 624.475, commercial self-insurance fund premium tax; ss.  
 328 624.509-624.511, insurance code: administration and general  
 329 provisions; s. 624.515, State Fire Marshal regulatory  
 330 assessment; s. 627.357, medical malpractice self-insurance  
 331 premium tax; s. 629.5011, reciprocal insurers premium tax; and  
 332 s. 681.117, motor vehicle warranty enforcement.

333 Section 10. Subsection (1) of section 213.053, Florida  
 334 Statutes, is amended to read:

335 213.053 Confidentiality and information sharing.—

336 (1) This section applies to all of the following:

337 (a) Section 125.0104, county government.†

338 (b) Section 125.0108, tourist impact tax.†

339 (c) Chapter 175, municipal firefighters' pension trust  
 340 funds.†

341 (d) Chapter 185, municipal police officers' retirement  
 342 trust funds.†

343 (e) Chapter 198, estate taxes.†

344 (f) Chapter 199, intangible personal property taxes.†

345 (g) Chapter 201, excise tax on documents.†

346 (h) Chapter 202, the Communications Services Tax  
 347 Simplification Law.†

348 (i) Chapter 203, gross receipts taxes.†

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- 349 (j) Chapter 211, tax on severance and production of
- 350 minerals and on water extracted for commercial or industrial
- 351 use.~~†~~
- 352 (k) Chapter 212, tax on sales, use, and other
- 353 transactions.†
- 354 (l) Chapter 220, income tax code.†
- 355 (m) Section 252.372, emergency management, preparedness,
- 356 and assistance surcharge.†
- 357 (n) Section 379.362(3), Apalachicola Bay oyster surcharge.†
- 358 (o) Chapter 376, pollutant spill prevention and control.†
- 359 (p) Section 403.718, waste tire fees.†
- 360 (q) Section 403.7185, lead-acid battery fees.†
- 361 (r) Section 538.09, registration of secondhand dealers.†
- 362 (s) Section 538.25, registration of secondary metals
- 363 recyclers.†
- 364 (t) Sections 624.501 and 624.509-624.515, insurance code.†
- 365 (u) Section 681.117, motor vehicle warranty enforcement.†
- 366 ~~and~~
- 367 (v) Section 896.102, reports of financial transactions in
- 368 trade or business.
- 369 Section 11. Subsection (1) of section 403.890, Florida
- 370 Statutes, is amended to read:
- 371 403.890 Water Protection and Sustainability Program.—
- 372 (1) Revenues deposited into or appropriated to the Water
- 373 Protection and Sustainability Program Trust Fund shall be
- 374 distributed by the Department of Environmental Protection for
- 375 all of the following purposes:
- 376 (a) The alternative water supply program as provided in s.
- 377 373.707.

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378 (b) The water storage facility revolving loan fund as  
379 provided in s. 373.475.

380 (c) The water quality improvement grant program as provided  
381 in s. 403.0673.

382 (d) The purposes specified in s. 211.41(2).

383 Section 12. This act shall take effect July 1, 2024.